

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

TIMOTHY VLAIKU, SR.,	)	CASE NO. 5:07 CV 2780
	)	
Plaintiff,	)	
	)	JUDGE LIOI
v.	)	
	)	
	)	MAGISTRATE JUDGE McHARGH
MICHAEL J. ASTRUE,	)	
Commissioner	)	
of Social Security,	)	
	)	<b><u>REPORT AND RECOMMENDATION</u></b>
Defendant.	)	

On December 4, 2009, the Court received a “Letter from plaintiff to Judge Lioi dated 11/25/2009 regarding attorney fee proposal.” (Doc. 23). In the letter, Plaintiff expresses concerns about the amount of attorney’s fees the Social Security Administration has withheld from his award of past due benefits and his agreement with counsel regarding attorney’s fees. (Doc. 23). The District Judge referred the matter to the Magistrate Judge on December 4, 2009. The order of referral provides that “[i]f the matter cannot be resolved with the assistance of Magistrate Judge McHargh, then, pursuant to 29 U.S.C. Section 636(b)(3), Fed. R. Civ. P. 72(b) and LR 72.1, Magistrate Judge McHargh shall issue a report and recommendation in this matter.” (Doc. 24).

Following the order of referral, on December 8, 2009, Plaintiff’s attorney filed a motion for attorney’s fees pursuant to 42 U.S.C. § 406(b). (Doc. 26). Plaintiff’s attorney indicates in the motion that a court may authorize payment of reasonable attorney’s fees

under 42 U.S.C. § 406(b), not to exceed 25% of a claimant's back due benefits, and that Plaintiff's attorney seeks an award of \$10,843.66 pursuant to that section of the Act. The \$10,843.66 amount requested represents the maximum 25% of past due benefits payable under Section 406(b) – or \$15,191.35 – less the amount this Court previously awarded to Plaintiff under EAJA – or \$4,347.69. *See* doc. 22 (adopting the Magistrate Judge's Report and Recommendation (doc. 20) to award attorney's fees in the amount of \$4,347.69). Attached to the motion is a copy of a retainer agreement between Plaintiff and his counsel "to appeal the denial of Social Security benefits to the United States District Court" signed by Plaintiff on August 24, 2007. (Doc. 26, Exhibit A). On December 21, 2009, Defendant filed a response to Plaintiff's motion for fees under Section 406(b) indicating that the Commissioner has no objection to the Court authorizing an award of fees in the amount requested. (Doc. 28).

The Court held a telephone conference to discuss this matter on December 29, 2009 in which Plaintiff, his counsel, and Defendant's counsel participated. During the telephone conference, the Court and counsel addressed Plaintiff's concerns regarding the award of attorney's fees, and Plaintiff expressed his agreement that the matter had been resolved.

The Magistrate Judge has reviewed Plaintiff's attorney's motion for fees and finds the amount requested to be reasonable under the circumstances. Defendant does not oppose the motion, and Plaintiff has expressed his acknowledgement during the telephone conference held December 29, 2009 that his concerns have been resolved. In light of the foregoing, the

Magistrate Judge recommends that Plaintiff's attorney's motion for fees under Section 406(b) be GRANTED.

s/ Kenneth S. McHargh  
Kenneth S. McHargh  
United States Magistrate Judge

Date: December 29, 2009.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of service of this notice. Fed. R. Civ. P. 72; L.R. 72.3. Failure to file objections within the specified time may constitute a WAIVER of the right to appeal the Magistrate Judge's recommendation. L.R. 72.3(b).